INDIGENOUS RIGHTS RECOGNITION IN PUBLIC POLICY – A DOMESTIC PERSPECTIVE

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I wish to acknowledge the Ngunnawal people, the traditional owners of the land on which we meet and thank Matilda House for her welcome yesterday.

Unfortunately for all of us, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Dr Bill Jonas, is unable to attend today and has instead sent three of his officers from his Native Title Unit and Social Justice Unit. Partly to give our presentation some coherence, and also because of the aptness of the metaphor we wish to liken policy formulation to three Russian dolls; one sitting inside the other in ever-decreasing size. The outer doll is the constitution, in which the **subjects** of power are **articulated**. The middle doll is the legislative framework, in which power is **allocated** (to defined bureaucracies, and between various stakeholders in differing degrees). The small doll represents the myriad of decisions and discretions in which power is **exercised**. All three of these notions of power, power as subject, power as location and power exercised are integral to the policy process.

While it is somewhat arbitrary to separate these three levels of power and their function in the policy formulation process, for the purpose of this presentation Cyndia Henty-Roberts will talk about influencing policy by guaranteeing rights at the constitutional level; the big doll. Eleanor Hogan will talk about implementing rights at the decision making level where power is exercised; the little doll. She will pay particular attention to influencing policies through reconciliation. I will talk about how rights may affect the allocation of power and penetrate policy process through legislation, the middle sized doll.

Before I bring out the dolls it is important when we talk about a rights approach to policy, to be clear about what we mean by rights. For the purpose of this presentation rights are sourced in international law and treaties (particularly the human rights treaties of International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic Social and Cultural Rights). In our discussion of rights in the annual native title and social justice reports we refer not only to the principles of self-determination, equality and cultural protection as set out in the text of the treaties. We also determine the meaning of rights by the way in which these principles have been interpreted and applied to States by various UN international human rights bodies, some charged with the job of monitoring states performance under these treaties.

Emerging out of this jurisprudence are some pretty clear guidelines on how governments should be formulating policy in relation to Indigenous people

within their territory. Five principles are fundamental to policy formulation in Australia.

First human rights principles protect the cultural and political integrity of Indigenous people. This is achieved not only through the principle of self-determination but also through the notion of equality. Thus while States may continue to deny that Indigenous people are a people entitled to self-determination, it is more difficult to deny Indigenous people the right to equality as it has been interpreted under the Convention on the Elimination of all forms of Racial Discrimination by the CERD Committee.

The Committee's General Recommendation 23 on Indigenous peoples confirms that, in its application to Indigenous peoples, the principles of equality requires states to respect their cultural and political integrity. It requires States inter alia to:

1. recognise and respect distinct Indigenous culture, history, language, and way of life as an enrichment to the State's cultural identity and to promote its preservation;
2. provide Indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;
3. ensure that no decision directly relating to the rights and interests of Indigenous people are taken without their informed consent; and
4. recognise and protect the rights of Indigenous peoples to own, develop, control, and use their communal lands and territories and resources and, where they have been deprived of their lands and territories traditionally used or otherwise inhabited or used without their free and informed consent, to take steps to return these land and territories. Only where this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

Thus the CERD Committee has interpreted the right to equality as a substantive right and not just a formal one. As a substantive right, equality not only permits the recognition of difference, at times it requires it. The distinction between these two standards of equality, formal and substantive, were made clear in the presentation of the previous speaker.

A second trend emerging from the international law jurisprudence in relation to Indigenous peoples is that human rights are not just a matter of exercising power consistently with human rights standards, such as equality. Human rights principles require that some of the power that states exercise actually be relinquished and relocated in the hands of those who were previously its subject. In relation to Indigenous peoples this means handing control of 'Indigenous issues' over to Indigenous peoples.

Thus the CERD Committee, in considering the 1998 amendments to the Native Title Act and its effect on Indigenous peoples observed that the process by which the amendments were reached and the failure of the government to obtain the informed consent of Indigenous people to the amendments were a breach of the standard of equality. The Committee's analysis relied on Article 5(c) of the Convention which requires equal participation in public life. The principle has come to be known as the principle of effective participation

In 1993 the CERD Committee's decision to support the original Natve Title Act was largely as a result of the consent of Indigenous representatives. In 1999 it was obvious to the CERD Committee that this consent had been withdrawn. The Committee reiterated this view in March 2000 when this Committee first looked at the Native Title Act – it based its decision to accept the discriminatory aspects of the Native Title Act because there was sufficient evidence that it was the product of genuine negotiations with the Indigenous populations, and it was on that basis, on the basis that it was the product of genuine negotiations. Not that it wasn't discriminatory, and not from a sort of arbitrary decision by the Committee that 200 years must be accepted. I come back to this because I think that this question of negotiating with the Indigenous populations is central and it perhaps is not seen so by the delegation.

I note that you have challenged our position that in situations regarding land rights of Indigenous peoples, *if there is a deviation from the rights established under the Convention*, it must be with the informed consent of the Indigenous people. That is said in our General Recommendation. I must admit to not being able to see that as such an extraordinary standard. If someone wants to purchase, or divest me, of land that I own, they must have my informed consent.[1] (emphasis added).

The Committee found that Australia had not allowed effective participation by Indigenous peoples in the formulation of the amendments to the Native Title Act. It was concerned that the power to approve or disapprove of the legislation was not appropriately located with Indigenous peoples whose rights were directly affected by it.

The principles of effective participation entitles Indigenous peoples to a right not only to be consulted in relation to Indigenous policy but to be involved to the point of giving or withdrawing consent. I wonder whether this principle was evoked in the formulation of the government's newly released five point plan on Aboriginal policy?

Thirdly, it is clear from the international law jurisprudence that protecting rights is not the same as balancing interests. This point was clearly made by the CERD Committee in relation to the dialogue with the Australian government over the Native Title Act amendments and Australia's heritage legislation.

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[1] Ms McDougall, Concluding Remarks, FAIRA, *CERD Transcript– 21-22 March 2000,* 1395th meeting, Part I, p6.

The Australian government argued that what was required in relation to effective participation was that Indigenous peoples be consulted along with other stakeholders. In the end it was a matter for Parliament to determine whether an appropriate balance of interests had been struck. This argument was rejected by the committee.

The justification for making the additional commitment towards a negotiated outcome with Indigenous peoples is the recognition that the relationship between Indigenous and non-Indigenous peoples should be an equal one. A relationship of equality is not one in which Indigenous people take their place, as just another interest group, among a vast range of non-Indigenous interest groups that might be affected by native title or other Indigenous issues. Rather it is one where Indigenous interests are equal to the combined force of non-Indigenous interests, in all their forms and manifestations. A legislative regime or policy program which is imposed rather than negotiated with the Indigenous people it directly affects is not based on a relationship of equality.

Fourthly it is clear from observations made by the Human Rights Committee in relation to native title that self-determination is a right to which Indigenous people are entitled. Its observation on Australia with respect to this right was:

> "With respect to article 1 of the Covenant, [the right to self determination] the Committee takes note of the explanation given by the delegation that rather than the term 'self-determination' the Government of the State party prefers terms such as 'self-management' and 'self-empowerment' to express domestically the principle of indigenous peoples exercising meaningful control over their affairs. The Committee is concerned that sufficient action has not been taken in that regard".[2]

In relation to Article 1 the Committee recommended that:

> "The State party should take the necessary steps in order to secure for the Indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources".[3]

Self-determination is the international law principle most relevant to providing the basis for negotiation between Indigenous and non-Indigenous people in relation to the control of traditional Indigenous land.

The assertion by Indigenous peoples of self-determination as a collective right challenges the notion that the only recognisable entities at international law are the state and the individual. The right to self-determination forms the basis on which Indigenous people may share power within the existing state. It gives Aboriginal peoples the right to choose how they will be governed.

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2 UN Doc CCPR/CO/69/AUS, para9.

3 *Ibid*, 9.

Finally, an important notion emerging from international law is that states have an obligation to ensure that the enjoyment of human rights are progressively realised. In order to ensure this progressive realisation of rights it is incumbent on states to establish benchmarks for the realisation of rights and evaluate the merit of programs and policies against these benchmarks.

Having discussed the meaning of 'rights' insofar as it applies to Indigenous peoples at international law, the problem remains as to how these rights can permeate through the three layers of power that determine policy formulation at a domestic level.

International law and domestic legislation

In Australia the implementation of human rights obligations relies on the enactment of domestic legislation. There is no automatic mechanism by which human rights obligations are incorporated into the domestic law. Even where legislation is enacted, there may still be no provision for enforcement within domestic courts. Certainly, in relation to the rights of Indigenous peoples to self-determination there is no domestic implementation or enforcement in Australia.

Thus, while international human rights norms provide a set of principles for establishing a new relationship between Indigenous and non-Indigenous people in Australia these principles must be adopted and incorporated domestically as a result of negotiations in which both Indigenous and non-Indigenous representatives enter freely, willingly, and in good faith. The *Racial Discrimination Act* enacted in 1975 was the domestic implementation of CERD.

Unfortunately, the RDA falls short of the international standard of equality in several significant ways. It has been interpreted to implement only a formal equality standard, that is, the right to be treated the same. This is in contrast to the international notion of equality as a substantive one which requires states to redress past racial discrimination and protect cultural identity.

Moreover, the RDA and the standards it imposes are able to be supplanted by subsequent discriminatory Commonwealth legislation. For instance, the *Native Title Act*, a subsequent piece of Commonwealth legislation, cannot be challenged on the basis that it offends the *Racial Discrimination Act*.

The only effective way of ensuring that legislation allocates power in a way that is consistent with human rights principles is to enshrine these rights in the constitution. It is this level of power, the big doll, which Cyndia will now discuss.

Protection of human rights currently available under domestic law

The Constitution is central to Australian law as it is the one source of law that cannot be derogated from and is not subject to a higher authority. While its provisions may be subject to interpretation by the courts, its content can only be altered by referendum, and it can never be ruled invalid. It also

determines the legislative relationship between the Commonwealth and the states.

Most constitutions around the world incorporate human rights and freedoms in their texts as statements of principle or substantive provisions. Others have formal collections of rights attached to them, generally in the form of a 'bill of rights', such as the United States and Canada. The different means by which greater constitutional protection of human rights could be enacted will be discussed later in this section.

To date the Australian constitution does not have a Bill of Rights – it operates on the assumption that individuals' rights are protected by the common law, and that if their rights were infringed they need only to recourse to the courts or to parliament through petitioning members. It does, however, have some provisions directed to the protection of individual rights, which are scattered rather than coordinated within the document. These rights include: the right to trial by jury, the right to freedom of religion, the right to ensure residents of different states are not discriminated against by virtue of that residency when in states other than their own, and the right to acquisition of property on just terms.

Many fundamental rights such as the right to vote, the right to practise religion freely, and the right to seek employment without being discriminated against on account of race or sex are not recognised at common law. Protection at common law is limited and develops slowly in a piecemeal fashion without any coordinated underlying doctrine.

Recognising and protecting Indigenous rights in a federal system

The recent scrutiny of Australia's compliance with human rights obligations has shown that we need to consider ways to improve accountability for human rights at all levels of government.

For example, an ordinary enactment of the Federal government – such as a legislated Bill of Rights - could incorporate Australia's obligations under international human rights treaties and accordingly provide protection to human rights standards. A legislated Bill of Rights could, for example, include protections such as guarantees against arbitrary detention; requirements for proportionality in sentencing offenders and the right to a fair trial; guarantees of equality before the law and non-discrimination; prohibitions of torture or cruel, inhuman or degrading treatment; and so forth. Such protections would clearly remove the ability of the states or territories to introduce laws such as mandatory sentencing.

In conjunction with section 109 of the Commonwealth Constitution which states that 'when a law of a state is inconsistent with a law of the Commonwealth, the latter shall prevail', a legislated Bill of Rights would operate to invalidate state or territory laws that conflict with these minimum standards of observance and protection. State and territory governments would remain free to pass whatever laws they chose, subject to the constraint that those laws met minimum core standards.

But the principle of parliamentary sovereignty means that such an approach would still not prevent the Commonwealth from introducing laws, such as the native title amendments, which either breach human rights or which allow the states and territories to breach human rights. The only way that the Commonwealth can be bound to protect rights is through constitutional mechanisms.

One option is to provide constitutional protection to a Bill of Rights. While this is the preferred option, it would take a considerable amount of time to achieve the necessary support to pass at a referendum.

A second option, which is more immediately achievable and provides adequate protection, is to amend the Constitution to include a guarantee of equality and non-discrimination. This guarantee would reflect the fact that the principles of non-discrimination and equality before the law have the status of *jus cogens*, or put differently, that they are standards from which no deviation is permitted at international law. It would place the commitment of government to these principles at the highest possible level, and guarantee that such commitment could never be put aside for more expedient political purposes.

A third alternative is to introduce a legislated Bill of Rights so that the public are able to understand more fully, through its operation, the purpose of a Bill of Rights and its benefits. People could then become more comfortable with the concept of a Bill of Rights, thereby building support in the long term for a Referendum to constitutionally enshrine it. A legislated Bill of Rights would also more closely link Australia's international obligations and domestic practice.

Negotiating with Indigenous peoples over 'unfinished business'

A further mechanism for specific recognition and protection of Indigenous rights that needs consideration in addition to a Bill of Rights and constitutional reform is the notion of a treaty or a framework agreement. This issue has recently been brought to public attention by ATSIC's treaty agenda and also the finalisation of the reconciliation process. Essentially, the notion of a treaty or a framework agreement stresses the need for Aboriginal peoples to negotiate freely the terms of their continuing relationship with Australia. Ideally, the process of agreement or treaty-making would introduce agreements that recognise Indigenous rights and address 'unfinished business'. This could take the form of legislation that provides for processes to enable the negotiation of a framework agreement (or treaty) at national level, and negotiation of agreements at the regional and local levels.

Having introduced such framework legislation, and provided appropriate resources for agreement processes to be entered into, the second stage of the process is a commitment to work towards amending the Commonwealth Constitution along similar lines to the current section 105A to provide the Commonwealth with the power to make agreements with Indigenous peoples. Section 105A of the Constitution provides that the Commonwealth may make agreements with the States with respect to the public debts of the States. It

further provides that the Federal government has power to legislate any matter contained in the agreement; that such agreements can be varied or rescinded by the parties; and that, agreements and any variations, are to bind all levels of government.

This would be a long-term approach and has the benefit of protecting documents of consensus (therefore reflecting both the aspirations of Indigenous people, and being acceptable to the broader community. By approaching such reform in two stages, the mainstream society is able to come to a deeper appreciation of the need for such agreements and to have a more detailed understanding of the issues involved.

In conclusion, it needs to be noted that the legislative and constitutional framework for dealing with 'unfinished business' has not been implemented. This means that agreement making with Indigenous people occurs at the discretion of policy makers in a myriad of government departments and agencies. It is on this point that I'll now hand you over to Eleanor to discuss this issue.

The notion of agreement-making with Indigenous peoples, particularly with respect to service delivery and funding arrangements, is not a new emphasis for Indigenous affairs. The most extensive expression of this in recent years has been the social justice package proposals put to Government in 1995 by ATSIC, CAR and the Social Justice Commissioner. Following nationwide consultation with Indigenous organizations and people, ATSIC recommended the negotiation of regional agreements with Indigenous peoples and the adoption of a series of social justice principles to form the basis of relations between Government and Indigenous peoples at the local community and regional levels. These principles emphasised the importance of entering into negotiations with Indigenous peoples and recognising their distinct cultural characteristics.

Principles for Indigenous social justice and the development of relations between the Commonwealth government and Aboriginal and Torres Strait Islander Peoples

1. The relationship between the Federal government and the Aboriginal and Torres Strait Islander peoples of Australia is founded in full acceptance and recognition of the fundamental rights of Aboriginal and Torres Strait Islander peoples to:

a) recognition of Indigenous peoples as the original owners of this land, and of the particular rights that are associated with that status;
b) the enjoyment of, and protection for, the unique, rich and diverse Indigenous cultures;
c) self-determination to decide within the broad context of Australian society the priorities and the directions of their own lives, and to freely determine their own affairs;

d) social justice and full equality of treatment, free from racism; and
e) exercise and enjoy the full benefits and protection of international covenants.

2. In the formulation of policies and delivery of programs that affect Aboriginal and Torres Strait Islander peoples, the Commonwealth, pursuant to powers in relation to Indigenous peoples overwhelmingly granted it by the people of Australia in the 1967 Referendum:

a) shall ensure that policies, the delivery of programs and services, and the effective improvement of service quality is achieved through processes *which are negotiated with and* which protect the rights of Indigenous peoples;
b) recognises the diversity of the Aboriginal and Torres Strait Islander peoples;
c) accepts the importance of empowerment for decision making and planning at the community and regional levels, and the need for government at all levels to cooperate and negotiate with Aboriginal and Torres Strait Islander communities and organisations;
d) requires that Indigenous peoples have full access to, and equitable outcomes from participation in, all relevant mainstream programs;
e) shall ensure processes of accountability to Aboriginal and Torres Strait Islander peoples and especially shall ensure their involvement in review and evaluation processes;
f) requires that collaboration and coordination between Government agencies providing services to Aboriginal and Torres Strait Islander peoples shall be significantly improved;
g) shall establish a genuine and productive partnership with Indigenous peoples through representative bodies at local, regional, state and national levels;
h) shall provide quantifiable data and other forms of information on the objectives and outcomes achieved, for all programs which impact on Aboriginal and Torres Strait Islander well-being; and
i) shall ensure that the interests of Indigenous peoples transcend existing conventions about the division and compartmentalisation of the functions of the various spheres of government...[4]

An agreement-making process was recommended in the Council for Reconciliation (CAR)'s documents. In its final report to Parliament[5] CAR

[4] ATSIC, *Recognition, rights and reform*, Commonwealth of Australia, Canberra, 1995, pp9-10.
[5] Council for Aboriginal Reconciliation, *Reconciliation, Australia's challenge: final report of the Council for Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament*. December 2000.See www.reconciliation.org.au/finalreport

included a draft Bill which forms a framework for the ongoing negotiation of unresolved issues between Indigenous and non-Indigenous people. The objects of the draft legislation include:

- To acknowledge the progress towards reconciliation and establish a process for reporting on the nation's future progress;
- To establish processes to identify and resolve the outstanding issues between Indigenous peoples and the Australian community;
- To initiate a negotiation process to resolve reconciliation issues between Indigenous peoples, and the wider community through the Commonwealth government that will result in a Treaty or Agreement.

The underlying assumption of the draft Bill is that reconciliation is an ongoing process in which unresolved issues are squarely raised and processes put in place for their resolution based on the informed consent of both sides. To this end the Council recommended the adoption of framework legislation that includes the negotiation by Indigenous peoples and Government of protocols to underpin negotiations on matters of unfinished business at national, regional and local levels.

The social justice principles form the appropriate starting point for negotiating these protocols. HREOC's *Social Justice Report 2000*, which focused on reconciliation, recommended that the Commonwealth government should enact framework agreement legislation, and that negotiations based on the social justice principles should commence immediately. Adequate resourcing for negotiations should also be provided. The Federal government should take the lead in seeking commitments to the protocols from all levels of government through the processes of COAG.

Meaningful reconciliation

It is worth pausing to reflect on the reconciliation process and the opportunity for the recognition of Aboriginal and Torres Strait Islander rights it was meant to provide. At this point in time, fifteen months after CAR presented its final report to the Federal government, and almost two years since the Roadmap for Reconciliation was presented at Corroboree 2000, much of the original content that the reconciliation process was intended to address is retreating from the public eye. The fact that reconciliation was put in place through a recommendation of the Royal Commission into Aboriginal Deaths in Custody, that it was meant to respond to matters of unfinished business between Indigenous and non-Indigenous people, has been conveniently sidelined.

With the frequent portrayal of reconciliation as a 'people's movement', what we are left with are the traces of its marketing 'feel good' aura. While the emphasis on a people's movement has a legitimate place in providing a forum for mobilising people, and in presenting positive models of Indigenous and non-Indigenous people working together, it can also act as a distraction from the original goals of reconciliation.

Yesterday, for example, Minister Ruddock characterised reconciliation in fairly populist and emotive terms. He spoke about reconciliation in terms of 'a desire to amend the legacy of the past', 'emerging sentiment', and 'a public change of heart'. This is a reductive view of reconciliation, a process which was meant to encompass more than a sea change in individual hearts. As we discussed above, CAR intended that its term would culminate in the provision of some legislative protection for Indigenous peoples' rights in their relationship with the rest of the nation through the establishment of a mechanism for agreement- or treaty-making processes. With the introduction of his 5-point plan Ruddock further stressed the need to 'turn sentiment into action' – and in doing so, highjacked the reconciliation agenda once again in ways that serves to distract from CAR's original recommendations for action.

The emphasis of his '5-point plan' on the rights of the individual and inclusiveness reflects the government's practical reconciliation agenda, and also the general policy prerogatives of 'self-reliance' and 'a fair go for all' (that is, a consensual, formal version of equality) evident in other areas such as its welfare reform agenda. Implicit in this emphasis on the rights of the individual is an assumption that the rights of all individuals – never mind the specific rights of Indigenous people – are already afforded adequate protection by the Australian legal system. And in setting the needs of individuals in opposition to the operation of Indigenous organisations and in drawing attention to some of the more negative aspects of the achievement of greater Indigenous governance over the past twenty years or so, the Minister's 5-point plan hints at a further fear of the potential for expression of Indigenous collective rights through increasing self-governance.

This 5-point plan also obscures the fact that government is yet to respond adequately to the reconciliation process – it has not made a formal or comprehensive response to the recommendations of either CAR's final report or to those of the *Social Justice Report 2000* on reconciliation. It has responded to only the first of CAR's six recommendations by progressing a reconciliation framework through COAG for addressing Indigenous disadvantage – and not to any of the so-called symbolic, rights-based content of the recommendations. The Private Members Bill on Reconciliation lodged by Senator Ridgeway on 5 April 2001 is yet to appear on the notice sheets for Senate in debate. The government has, however, provided funding for two separate initiatives - the establishment of Reconciliation Australia and the creation of Reconciliation Place. Reconciliation Australia has been set up as an independent, non-profit private company with funding for 3 years equivalent only to six months of operational costs for CAR. This reduces its capacity to coordinate reconciliation at a national level and reinforces the image of reconciliation as a

populist, goodwill movement. The lack of consultation with Indigenous people over the construction of Reconciliation Place has already been met with significant disquiet, particularly in regard to the 'separation sliver'.

These actions reflect incipient paternalism of the government's practical reconciliation agenda. Rather than seeking to establish an equitable, two-way dialogue or partnership between Indigenous and non-Indigenous Australians, the government only responds to those aspects of reconciliation that fit within its own policy prerogatives.

Human rights implications for policymakers

The pressing question for policymakers in government departments and NGOs is how, in the absence of adequate legislative frameworks to protect Indigenous rights, they might effectively recognise and protect those rights. The following suggestions have been made with non-Indigenous policymakers in non-Indigenous organisations in mind in particular – for consideration of how their policy practices might act to nullify or facilitate the recognition of Indigenous rights.

In considering how policymakers might support a rights-based approach to Indigenous issues, the adoption of human rights principles to establish protocols and best practices, and to inform frameworks for Indigenous policy and service delivery should be fundamental. In order to take into account factors like cultural difference and the impact of historically-based disadvantage, the principles of non-discrimination and substantive equality should provide core values. Implementing the principle of progressive realisation might mean committing more significant resources and re-assessing benchmarks and targets to ensure adequate progress – for example, of asking the question of whether we are doing enough to overcome disadvantage or merely managing it. It should also mean making a commitment to addressing Indigenous disadvantage over the long-haul, and establishing long-term targets and adopting a more flexible approach to programs and service delivery where possible.

Ensuring effective Indigenous participation entails building equitable partnerships with Indigenous people and communities especially in regard to decision-making processes, including those relating to service delivery and design. For example, benchmarks should be negotiated with Indigenous peoples, with clear timeframes for achieving longer term and short-term goals.

Effective participation also needs to be linked to the principle of self-determination. This might mean respect and support for Indigenous self-determination as it realised through Indigenous organisational structures or forms of self-government, and sensitivity in working with these arrangements.

In the current absence of legislative mechanisms to facilitate agreement-making processes, it should mean adopting human rights principles to set protocols for negotiations with Indigenous peoples at all levels – national, regional and local.

Lastly, a rights-based policymaking approach might also include contributing to public awareness for the need to enshrine and protect Indigenous rights in line with international standards and ensure government accountability. In this presentation we have sought to show how rights can and must be incorporated at three levels of policy formulation. Rights need to be articulated as a subject of power in the Constitution. Rights need to be allocated through legislation. And finally, rights need to be taken into account at the point at which power is exercised through policy decisions and programs.